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RISK MANAGEMENT & LEGAL OPERATIONS BRIEF

The Fraudulent Lien Release — When a Paid Contractor Does Not Pay Its Subs

How a GC Can Do Everything Right — Pay in Full, Require Insurance, Execute Lien Releases — and Still Face Litigation From an Unpaid Sub-Subcontractor

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The Scenario That Breaks Every Rule of Fairness

Imagine the following: a general contractor hires a licensed, insured pool contractor for a residential project. The GC pays that contractor in full — every invoice, on time. The GC requires the pool contractor to sign lien releases at each payment milestone, certifying that all of its subcontractors and suppliers have been paid. The pool contractor signs those releases. The GC does everything the industry and the law require.

Then the concrete company that poured the pool shell — hired by the pool contractor, not by the GC — files a mechanic's lien against the property. The pool contractor, it turns out, collected every dollar the GC paid and never forwarded payment to its concrete sub. Then the pool contractor files for bankruptcy. And the GC — who followed every protocol, paid every invoice, and collected every signed lien release — now faces lien litigation, title issues, and five-figure legal fees to clear a lien it had no hand in creating.

This scenario is not hypothetical. It is one of the most financially damaging and legally complex situations a general contractor can face — because the GC is a victim of fraud and simultaneously the party whose property interest is encumbered by the resulting lien. The sub-subcontractor who was not paid has a legitimate claim. The GC who paid its contractor in full has a legitimate grievance. And the pool contractor who fraudulently signed lien releases is in bankruptcy — leaving both the GC and the unpaid concrete company with a dispute that the party who caused it can no longer resolve.

THE CORE INJUSTICE: A lien release is a sworn certification that all parties below the signing contractor in the payment chain have been paid. When a contractor signs a lien release falsely — knowing that its own subcontractors have not been paid — that act is fraud. It is not a contractual misunderstanding. It is not a payment timing issue. It is a deliberate false sworn statement that transfers the financial consequences of the contractor's own non-payment onto the owner and the general contractor who trusted the certification. Georgia law recognizes this. The consequences for the signing party are severe — but only when the signing party can be found and has assets. When they file for bankruptcy, those consequences become theoretical while the lien and the litigation costs become very real.

90 days Georgia Sub-Sub Lien Filing Deadline	Fraud Legal Status of a False Lien Release	$0 GC Recovery from a Bankrupt Contractor	$40K–$120K Typical Litigation Cost to Discharge Lien	100% Title Clouded Until Lien is Resolved

1. The Legal Framework — How Georgia Lien Law Creates This Problem

To understand why a GC who paid in full still faces a lien from an unpaid sub-subcontractor, you must understand how Georgia's mechanics and materialmen's lien statute operates at the sub-sub tier.

O.C.G.A. § 44-14-361 — The Lien Statute: Georgia law grants a lien right to any person who supplies labor, services, or materials to improve real property — including subcontractors and materialmen who have no direct contract with the property owner. The concrete company that poured the pool shell has a lien right against the property even though its contract was with the pool contractor, not with the GC or the owner. The lien attaches to the property itself — not to the contractor's bank account, not to the GC's accounts receivable. The owner's land secures the claim of a party the owner never contracted with and may never have known existed.

The 90-Day Filing Window: Under O.C.G.A. § 44-14-361.1, a sub-subcontractor must file its lien claim within 90 days from the last date it furnished labor or materials to the project. Once filed within that window, the lien is valid and enforceable against the property regardless of whether the owner or GC has already paid the party one tier above. Payment to the pool contractor does not extinguish the concrete company's lien right — because the concrete company's right runs against the property, not against the pool contractor's receipt of payment.

The Lien Release — What It Is Supposed to Do: A lien release (also called a lien waiver) is a legal document in which a party certifies that it has received payment and waives its right to file a lien for the work covered by the waiver. Georgia's lien waiver statute (O.C.G.A. § 44-14-366 et seq., significantly amended in 2009) distinguishes between conditional waivers (effective only upon actual receipt of payment) and unconditional waivers (effective immediately upon signing). A contractor who signs an unconditional lien waiver certifying that all subcontractors and suppliers have been paid is making a sworn factual representation — not just an agreement. If that representation is false, it is fraud.

When the Pool Contractor Signs Falsely:	The pool contractor in this scenario signed lien releases certifying that the concrete company and all other subcontractors had been paid. That certification was false at the time of signing — the pool contractor knew it had not paid the concrete company. Under Georgia law, and under the FindLaw and Taft analysis of lien waiver fraud, this constitutes a material false sworn statement that can give rise to: civil fraud liability to the GC and the property owner; potential criminal exposure under Georgia's false swearing statutes; and personal liability of the individual signatory, not just the corporate entity. However, all of these remedies require the pool contractor to exist and have assets — and the pool contractor has filed for bankruptcy.

2. The Bankruptcy Complication — How the Pool Contractor's Filing Redirects the Problem

When the pool contractor files for bankruptcy, several legally significant things happen simultaneously — and almost none of them benefit the GC or the unpaid concrete company:

The Automatic Stay:	Upon filing for bankruptcy protection, an automatic stay goes into effect under 11 U.S.C. § 362. This stay halts virtually all collection actions against the bankruptcy debtor — including the GC's fraud claim, the GC's breach of contract claim, and any indemnification claim arising from the false lien release. The GC cannot pursue the pool contractor in state court for the fraudulent lien certification without obtaining bankruptcy court relief from the stay. The process of filing a motion to lift the stay, appearing in bankruptcy court, and pursuing a fraud claim through that proceeding adds legal cost and timeline to an already expensive situation.
Unsecured Creditor Status:	The GC's claims against the pool contractor — for indemnification, for the cost of defending the lien, for damages arising from the fraud — are unsecured claims in the bankruptcy proceeding. They compete with every other unsecured creditor: the pool contractor's materials suppliers, equipment lessors, other GCs it defrauded, and its own employees with wage claims. In a typical construction contractor bankruptcy, unsecured creditors recover pennies on the dollar — if anything. The GC who was defrauded by a false lien release may spend \$15,000 in bankruptcy proceeding legal fees to be awarded a 3-cent recovery on each dollar claimed.

The Lien Remains Against the Property:	Critically, the pool contractor's bankruptcy does not extinguish the concrete company's mechanic's lien against the GC's property. The lien is not a claim against the pool contractor — it is a claim against the real property. The concrete company's right to pursue that lien in state court is not stayed by the pool contractor's bankruptcy because the concrete company is not suing the pool contractor. It is pursuing its statutory lien right against the land. The GC, whose property is encumbered, must resolve that lien through a separate proceeding — independently of anything happening in the bankruptcy.
The GC Is Now Fighting on Two Fronts:	After the pool contractor files bankruptcy, the GC faces simultaneous legal proceedings: defending or settling the concrete company's lien action in state court (to clear title to the property), and pursuing its fraud and indemnification claims against the pool contractor in bankruptcy court (to recover the legal costs and damages created by the false lien release). Each front has its own attorneys, its own fees, its own timeline, and its own uncertainty. The GC who paid in full and collected signed lien releases is now the central party in two separate legal proceedings — neither of which it initiated.

THE DOUBLE PAYMENT RISK: In some lien dispute scenarios, a property owner or GC may ultimately be required to pay twice — once to the contractor (which has already occurred) and again to the unpaid sub-subcontractor to discharge the lien and clear title. This outcome — sometimes called 'double payment liability' — is the most severe consequence of a fraudulent lien release scenario and is precisely why lien releases must be structured to capture certification obligations at the sub-subcontractor tier, not just at the direct subcontractor tier.

3. The Litigation Cost Anatomy — What This Actually Costs the GC

The financial damage to a GC in a fraudulent lien release / sub-sub bankruptcy scenario runs across multiple categories, each accumulating independently:

Cost Category	Typical Range	Notes
Lien discharge — state court litigation	**$15,000–$60,000**	Depends on whether concrete co. settles or tries to judgment
Title company hold / closing delay	**$2,000–$15,000**	Refinancing or sale blocked until lien cleared
Bankruptcy court proceedings — GC claims	**$5,000–$20,000**	Motion to lift stay, proof of claim, creditor proceedings
Attorney fees — lien defense	**$250–$500/hr**	Georgia lien litigation routinely 60–120 billable hours

Attorney fees — bankruptcy creditor	**$300–$600/hr**	Bankruptcy court appearance and creditor representation
Expert witness / accounting	**$5,000–$20,000**	If fraud damages require forensic documentation
Owner / lender demands from title cloud	**Variable**	Owner may demand indemnification; lender may freeze draws
Lost opportunity cost — management time	**Unrecoverable**	PM and principal time diverted from active projects

4. The Fraud Doctrine — What the Law Says About a False Lien Release

The legal community has long recognized the severity of a contractor signing a false lien release. This is not a gray area of construction law:

FINDLAW / TAFT ANALYSIS: 'It is fraud to sign a false lien waiver.' A contractor who signs an unconditional lien release certifying that subcontractors have been paid — when the contractor knows they have not been paid — is making a material false sworn statement with intent to mislead the party relying on the certification. Under Georgia and most state laws, this subjects the individual signatory to personal civil liability, potential criminal exposure for false swearing, and liability for all consequential damages caused by the reliance on the false certification.

In practical terms, the GC has multiple legal claims against the pool contractor arising from the false lien release:

Common Law Fraud: The pool contractor made a false representation of a material fact (that all subs were paid), knew it was false, intended the GC to rely on it, and the GC did rely on it to its detriment (allowing the project to close without independent verification of sub-sub payment). All elements of common law fraud under Georgia law are present.

Breach of Contract — Indemnification: The subcontract between the GC and the pool contractor almost certainly contained an indemnification clause requiring the pool contractor to hold the GC harmless from claims arising from the pool contractor's failure to pay its own subs. The concrete company's lien and the resulting litigation costs are damages flowing directly from the pool contractor's breach of that indemnification obligation.

Breach of the Lien Release Certification: The lien release itself is a contract — an agreement that in exchange for payment, the contractor certifies payment downstream. Signing that certification falsely is a breach of the release agreement, independently of the fraud claim.

Personal Liability of the Signatory:	Under the Taft analysis and Georgia false swearing statutes (O.C.G.A. § 16-10-71), the individual who signed the false lien release — not just the corporate entity — may face personal civil and criminal liability. This is significant because the corporation may be judgment-proof in bankruptcy while the individual owner or officer who signed the release retains personal assets. The GC's fraud claim should be evaluated against the individual signatory, not just the corporate entity.

5. The Failure Chain — How This Scenario Unfolds Step by Step

①	GC hires pool contractor. Verified license, insurance, additional insured endorsement — all confirmed. Contract executed. GC followed every onboarding protocol.
②	Pool contractor hires concrete company to pour the pool shell. This agreement is between the pool contractor and the concrete company only. GC has no privity with the concrete company and may not know it exists.
③	GC pays pool contractor in full at each milestone. Pool contractor signs lien releases at each payment, certifying all subcontractors and suppliers are paid. Releases are collected and filed by GC administrative team.
④	Pool contractor collects full GC payment and does not forward payment to the concrete company. The concrete company completes its work and submits invoices to the pool contractor. Pool contractor does not pay.
⑤	Pool contractor files for bankruptcy. Assets are frozen. All collection actions against the pool contractor are stayed. The concrete company — owed its full contract amount — has no viable collection path against the pool contractor through normal channels.
⑥	Concrete company files a mechanic's lien against the GC's property under O.C.G.A. § 44-14-361 within the 90-day statutory window. The lien is valid on its face and immediately clouds title to the property.
⑦	GC discovers the lien and the bankruptcy simultaneously. The pool contractor's signed lien releases are in the file — certifying payment that was never made. GC now holds evidence of lien release fraud and faces an active lien on the property.
⑧	GC must now engage litigation counsel on two fronts: lien discharge proceeding with the concrete company in state court; and bankruptcy creditor proceeding to pursue fraud and indemnification claims against the pool contractor.

⑨	GC negotiates with the concrete company to settle the lien — typically paying some or all of what the concrete company is owed to clear the title — and seeks to recover that payment from the pool contractor's bankruptcy estate. Recovery from the estate: uncertain, delayed, and likely partial.
⑩	Total litigation and settlement cost to the GC: $40,000–$120,000+. Total recovery from the bankrupt pool contractor: potentially $0. The GC who did everything right absorbs the financial consequences of another party's fraud.

6. The Prevention Protocol — What the Ducere Standard Requires Going Forward

The fundamental gap in the standard GC subcontractor payment protocol is that lien releases are collected from the direct subcontractor — who certifies downstream payment — but that certification is accepted without independent verification that sub-subcontractors have actually been paid. The pool contractor scenario exposes this gap at maximum cost. The Ducere prevention protocol closes it:

Tier-2 Lien Releases — Required Before Final Payment: For any subcontract scope that involves a subcontractor who is known or likely to hire its own sub-subcontractors (concrete, framing, roofing, MEP trades, pool construction, landscape grading), Ducere now requires lien releases executed directly by the sub-subcontractors — not just by the direct sub — as a condition of final payment to the direct sub. This is not standard industry practice. It is the practice required to close the gap that the pool contractor scenario exposes.

Joint Check Agreements for High-Risk Subcontractors: For subcontracts above a defined threshold (recommended: $25,000), and for any subcontractor whose scope involves significant material or sub-sub labor costs, Ducere implements a joint check agreement — requiring that checks to the subcontractor for sub-sub costs be made jointly payable to the subcontractor and its sub-subcontractor. The sub-sub must endorse the check to receive payment. This structurally eliminates the pool contractor scenario: the concrete company must endorse the check, confirming receipt, before the pool contractor can deposit it.

Conditional vs. Unconditional Lien Release Discipline: Ducere collects conditional lien releases at progress payments (effective only upon actual receipt of cleared funds) and unconditional lien releases at final payment. The distinction matters because an unconditional release signed before payment is cleared creates a window for the sub to claim it was obtained under duress or before actual payment. Conditional releases are signed at draw time; unconditional releases are signed after confirmation of cleared payment — with dates documented.

Sub-Subcontractor Identification Requirement:	All Ducere subcontracts now require the direct subcontractor to disclose, in writing before mobilization, the identity of every sub-subcontractor and materials supplier it intends to use on the project. This disclosure serves two purposes: it allows the GC to send preliminary notices or monitor lien deadline calendars for those parties, and it documents the pool contractor's knowledge of the concrete company relationship — which is directly relevant to the fraud analysis when a false lien release is signed.
Insurance Additional Insured — Confirmed at Sub-Sub Tier:	Requiring the pool contractor to list Ducere as an additional insured on its liability policy is necessary but not sufficient. If the pool contractor's policy lapses — as frequently happens with a contractor heading toward bankruptcy — the AI endorsement is worthless. Ducere now conducts a mid-project insurance currency check on all active subcontractors: at 50% project completion, the COI is re-verified against the issuing carrier directly, not by re-reading the original certificate.
Bankruptcy Early Warning Signals:	A pool contractor heading toward bankruptcy does not typically announce it. The signals are operational: delayed responses to RFIs, personnel turnover on the project, sub-sub complaints about non-payment reaching the GC's superintendent, materials deliveries interrupted, and payment application irregularities. Ducere trains project managers to recognize these signals and escalate to principal-level review when two or more are present simultaneously — creating an opportunity to require current lien releases and sub-sub payment confirmations before the bankruptcy filing occurs.

THE BOTTOM LINE: A general contractor can pay in full, collect signed lien releases, verify insurance, and list itself as an additional insured — and still face six-figure litigation costs because a subcontractor lied on a sworn document and then filed for bankruptcy. The legal system provides remedies for that fraud. But those remedies require a solvent, asset-holding defendant to be worth pursuing. When the fraudulent party disappears into bankruptcy, the GC who was defrauded is left holding the litigation bill and the lien. The prevention protocol described in this brief — tier-2 lien releases, joint check agreements, sub-sub disclosure requirements, and mid-project insurance verification — does not eliminate this risk. Nothing eliminates it entirely. But these controls close the gap that this specific scenario exploits, and they do so at a fraction of the cost of the litigation they prevent.

DUCERE'S OWNER'S REP VALUE IN THIS CONTEXT: Property owners and developers who engage Ducere as Owner's Representative bring these controls to their projects before a pool contractor, concrete company, or any other sub-sub relationship creates a lien exposure. Owner's Rep engagement is the most cost-effective way to ensure that every tier of the payment chain is documented, monitored, and protected. Contact us: ducereconstruction.com | korey@ducereconstruction.com | (404) 565-0631

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Sources: O.C.G.A. § 44-14-361 (Georgia Mechanics and Materialmen's Lien Statute); O.C.G.A. § 44-14-366 (Lien Waiver Statute); O.C.G.A. § 16-10-71 (False Swearing); 11 U.S.C. § 362 (Bankruptcy Automatic Stay); FindLaw / Taft Law — Personal Liability for Inaccurate Lien Waiver (2024); Levelset Georgia Lien Law FAQ 2025; Smith Currie — Georgia Lien Waiver Statute Analysis; Cobb Law Group — Georgia Lien Enforcement; Bouhan Falligant — Georgia Sub-Subcontractor Lien Rights.